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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/573,814

03/28/2007

Raz Jelinek

4110-51

9338

23117 7590 08/02/2010
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EXAMINER

SINGH, SATYENDRA K

ART UNIT

PAPER NUMBER

1657

MAIL DATE

DELIVERY MODE

08/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/573,814	Applicant(s) JELINEK, RAZ	
	Examiner SATYENDRA K. SINGH	Art Unit 1657	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/JON P WEBER/
Supervisory Patent Examiner, Art Unit 1657

Continuation of 11. does NOT place the application in condition for allowance because: applicants have not amended the claims under examination, which have been rejected under 102(b) over the prior art reference of Johnston et al (see previous office action of the record, mailed on 6/3/2010).

It is noted that applicant's attorney of record, Mr. Gordon Klancnik had an interview with the examiner and SPE, Jon Weber (after the final rejection on 7/21/2010), and discussed the enablement issues of the disclosure of the cited prior art of Johnston et al (see examiner's interview summary of 7/21/2010, in particular), and possible claim amendments that can overcome the cited art of record. However, as of date, no such amendments have been submitted by applicants on the record.

Regarding the 102(b) rejection of record, applicant's arguments are mainly focussed on the same issue that the disclosure of Johnston et al (see remarks, pages 2-9, in particular) is not "enabling" as it does not teach or disclose "living cells" containing "nanopatch" sensors, and merely "indicates directions for future studies" based on experiments with synthetic phospholipids, in vitro. Such arguments are not found persuasive because, as noted in the final rejection of record (see final office action mailed on 6/3/10, pages 5-8, in particular), the disclosure of Johnston et al is deemed to be fully enabled and anticipatory to the claimed invention as it discloses the fact that "similar polymerization can be induced in *Acholeplasma laidlawii* cells grown on diacetylenic fatty acid" (see summary on page 57) and the fact that diacetylenic fatty acid were "biosynthetically incorporated into the cells" (see Johnston et al, age 67, last paragraph, in particular), which upon "brief irradiation of cells" produce "visible spectral changes" (i.e. possess inherent spectral and other characteristics of the product as claimed). It is noted that instant claim 1, as currently presented, does not require any structural feature of the product (i.e. "nanopatch sensor" or "perturbation-sensitive construct") that distinguishes itself over the cited prior art of record. Since, Johnston et al disclose and synthetically demonstrate the fact that such biomembranes are "sensitive to its local environment and may provide useful probe" for environmental changes, clearly suggests the fact that they can act as nanopatch sensors, even in a living cell membrane, as disclosed by their "preliminary studies on *Acholeplasma laidlawii* cells grown on diacetylenic fatty acid" (see Johnston et al, page 67, last paragraph and conclusions, in particular). Also, since the terms "nanopatch sensors" and "perturbation-sensitive constructs" have not been explicitly defined to provide and/or require any specific structural features of the cell membrane, the teachings of Johnston et al are deemed to be fully anticipatory to the invention as claimed, especially because they explicitly disclose the fact that "...cells can incorporate the diacetylenic fatty acids into their biomembranes and upon ultraviolet irradiation they undergo cross-linking and polymerisation. The spectral behaviour is similar to that observed with model biomembranes" (see Johnston et al, page 68, last paragraph, in particular).

Applicant's arguments regarding the provisional ODP of record is noted and considered (see remarks, pages 9-10). However, since the pending claims remain rejected over the cited prior art of Johnston et al, and since, applicants have not provided a terminal disclaimer over the copending claims in 11/666,134, the ODP rejection of record is properly maintained.

/Satyendra K. Singh/
Examiner, AU 1657